

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION

NO. 2:21-CV-7-FL

DANIEL FELIX; HOMELESS CATS OF  
HATTERAS ISLAND, NC; and NON-  
PROPERTY ANIMALS OF HATTERAS  
ISLANDS NC,

Plaintiffs,

v.

DOUG DOUGHTIE, Sheriff in his official  
and individual capacity; DONAVAN  
RUTH, in his official and individual  
capacity; DARE COUNTY, NORTH  
CAROLINA; ROBERT OUTTEN, Dare  
County Attorney, in his official and  
individual capacity; ROBERT  
WOODARD, Dare County Board of  
Commissioner Chairman, in his official  
capacity and individual capacity; WALLY  
OVERMAN, Dare County Board of  
Commissioner Vice Chairman, in his  
official and individual capacity; ROB  
ROSS, Dare County Board of  
Commissioner, in his official capacity and  
individual capacity; STEVE HOUSE, Dare  
County Board of Commissioner, in his  
official capacity and individual capacity;  
JIM TOBIN, Dare County Board of  
Commissioner, in his official capacity and  
individual capacity; DANNY COUCH,  
Dare County Board of Commissioner, in  
his official capacity and individual  
capacity; ERVIN BATEMAN, Dare  
County Board of Commissioner, in his  
official capacity and individual capacity;  
ANDREW WOMBLE, District Attorney,  
in his official capacity and individual  
capacity;

ORDER

JEFF CRUDEN, District Attorney, in his )  
official capacity and individual capacity; )  
JENNIFER BLAND, District Attorney, in )  
her official capacity and individual )  
capacity; JOSH STEIN, NC Attorney )  
General, in his official capacity and )  
individual capacity; ROY COOPER, NC )  
Governor, in his official capacity and )  
individual capacity; GOVERNOR )  
MCCRORY, NC Governor, in his official )  
capacity and individual capacity, )  
) )  
Defendants. )

This matter comes before the court on plaintiff Daniel Felix’s motion for rehearing,<sup>1</sup> pursuant to Rules 59 and 60 of the Federal Rules of Civil Procedure. (DE 48). For the following reasons, upon careful consideration of the motion and the record in this case, the motion is denied.

### **BACKGROUND**

The court summarizes the background of this case relevant to the instant motion. Plaintiff, proceeding pro se, initiated suit on February 8, 2021. On March 15, 2021, defendants Ervin Bateman, Danny Couch, Dare County, North Carolina, Doug Doughtie, Steve House, Robert Outten, Wally Overman, Rob Ross, Donavan Ruth, Jim Tobin, and Robert Woodard filed motion to dismiss. On April 16, 2021, defendants Jennifer Bland, Jeff Cruden, and Andrew Womble filed motion to dismiss. On April 19, 2021, defendants Joshua H. Stein, Roy Cooper, and Governor McCrory filed motion to dismiss.

On June 8, 2021, the court granted all defendants’ motions to dismiss. Judgment was filed and entered that same day. On June 18, 2021, plaintiff filed instant motion seeking a rehearing on

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<sup>1</sup> For the reasons stated in the court’s order dated June 8, 2021, the court treats the instant motion as only effective as to plaintiff Daniel Felix, rather than the other, animal plaintiffs. See Felix v. Doughtie, No. 2:21-CV-7-FL, 2021 WL 2345252, at \*3-4 (E.D.N.C. June 8, 2021). Therefore, for ease of reference, the court refers to plaintiff in the singular to mean plaintiff Daniel Felix.

the court's order, citing Federal Rules of Civil Procedure 59 and 60. On July 2, 2021, plaintiff filed notice of appeal of the court's June 8, 2021, order.

## **COURT'S DISCUSSION**

### **A. Jurisdiction**

“Generally, a timely filed notice of appeal transfers jurisdiction of a case to the court of appeals and strips a district court of jurisdiction to rule on any matters involved in the appeal.” Doe v. Pub. Citizen, 749 F.3d 246, 258 (4th Cir. 2014). “[A] district court is authorized, under the in aid of appeal exception [to this general rule], to entertain” certain post-judgment motions “after a party appeals the district court’s judgment.” See Fobian v. Storage Tech. Corp., 164 F.3d 887, 890 (4th Cir. 1999). Accordingly, “when a party files a timely notice of appeal followed by a timely Rule 59 motion, the notice of appeal is tolled and does not become effective to confer jurisdiction on the court of appeals until the entry of an order disposing of the Rule 59 motion.” United States v. Silvers, 90 F.3d 95, 98 (4th Cir. 1996); see also Fed. R. App. P. 4(a)(1) (guiding that a “notice of appeal becomes effective to appeal a judgment or order . . . when the order disposing of . . . [a Rule 59] motion is entered”); Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 59 (1982) (“[I]n order to prevent unnecessary appellate review, the district court was given express authority to entertain a timely motion to alter or amend the judgment under Rule 59, even after a notice of appeal had been filed.”).

Further, the court construes plaintiff’s motion as arising solely under Rule 59(e), rather than Rule 60(b), because it was filed within 10 days of the court’s final judgment and challenges the correctness of that judgment. See Dove v. CODESCO, 569 F.2d 807, 809 (4th Cir. 1978) (“[I]f a post-judgment motion is filed within 10 days of the entry of judgment and calls into question the correctness of that judgment it should be treated as a motion under Rule 59(e) . . . .”); see also

Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403, 412 n.11 (4th Cir. 2010) (explaining that although the Federal Rules of Civil Procedure have been subsequently amended, “CODESCO remains binding precedent”).

In sum, the court concludes it has jurisdiction to dispose of plaintiffs’ motion, but it treats such motion as only arising under Rule 59(e).

B. Merits

Rule 59 allows “[a] motion to alter or amend a judgment . . . no later than 28 days after the entry of the judgment.” Fed. R. Civ. P. 59(e). “[T]here are three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Pac. Ins. Co. v. Am. Nat. Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). “Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance.” Id. Finally, to qualify for the third category, the judgment and related order “must be dead wrong.” Cf. TFWS, Inc. v. Franchot, 572 F.3d 186, 194 (4th Cir. 2009).

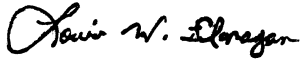
Here, the court’s review of plaintiff’s motion finds only arguments which could have been raised prior to issuance of judgment, (see, e.g., Pl.’s Mot. (DE 48) at 8 (raising an emotional-harm-caused-by-animal-deaths theory of injury); id. at 14 (raising additional arguments of unconstitutional policies by Dare County Commissioner defendants)), arguments regarding novel legal theories, (see, e.g., id. at 13 (raising a legal theory of “hostile living environment”)), or challenges to legal conclusions related to the judgment that the court concludes are not “dead wrong.” (See, e.g. id. at 6 (arguing that “Due Process Of Law rights guarantee these animals have

a right to bring a lawsuit just the same as a person”); id. at 11-12 (expounding further on plaintiff’s theory of ongoing harm that would negate claim preclusion)). Accordingly, plaintiff’s motion raises grounds beyond the scope of the remedy provided by Rule 59(e) and cannot be granted by the court.

### **CONCLUSION**

Based on the foregoing, the court DENIES plaintiff’s motion. (DE 48).

SO ORDERED, this the 19th day of July, 2021.

  
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LOUISE W. FLANAGAN  
United States District Judge